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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/755,135	01/12/2004	Earl Votolato	12,577	2605

7590 05/01/2007  
Mr. William W. Haefliger  
Suite 512  
201 S. Lake Ave.  
Pasadena, CA 91101

EXAMINER
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SOLD, JENA A

ART UNIT	PAPER NUMBER
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3765

MAIL DATE	DELIVERY MODE
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05/01/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

Application No.

10/755,135

Applicant(s)

VOTOLATO, EARL

Examiner

Jena A. Sold

Art Unit

3765

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 27 March 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 10-12 is/are allowed.
- 6) ☐ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Notice of Informal Patent Application
- ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Response to Amendment***

Examiner acknowledges applicant's amendment, filed on 3/27/2007, in response to the Ex Parte Quayle Action dated 2/22/2007.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 5, 8 and 9 are rejected under 35 U.S.C. 102(b) as being anticipated by Goersch (U.S. 1,062,587). Goersch discloses a swimming device comprising member 1, present applicant's culinary finger guard plate including a pair of slightly curved lips 7 provided on the upper surface of member 1, present applicant's two finger guards upstanding from a side of the plate (lines 46-50). As visible in Figure 1, members 7 have intermediate spacing therebetween, said intermediate spacing capable of accommodating a user's middle finger to extend generally parallel to the plate. As each member 7 is slightly curved or convex to engage the third and fourth fingers of the wearer (but capable of engaging the first and third fingers of the wearer as well), said finger guards 7 include finger retention portions overhanging the plate – that is, the portions of members 7 that are slightly convex to engage the user's fingers (lines 85-

88). Additionally, as said members 7 are made of sheet metal and bent into formation (lines 83-88), said members are necessarily bendable and adjustable, thus providing adjustable spaces for the user's fingers. Finger guard members 7 are convex, bending backward and diverging slightly at their ends (lines 54-57, 85-88) and, thus, the overhanging portions of said members maintain curvatures in opposite directions, and away from each other and with convexity toward said intermediate spacing whereby said intermediate spacing between the guards, due to the aforementioned convexity of members 7, has venture shape in a direction away from the plate member 1.

Regarding claims 2 and 9, as said finger retention portions of member 7 diverge slightly at their ends, said finger retention portions are arcuate or hook-shaped and have concave sides facing the plate. Each member 7 has a terminal portion spaced from the plate and cantilever support by the plate.

Regarding claim 5, as finger guards 7 are formed by punching out a sheet metal portion of plate member 1 and bending the punched-out portions backward so they diverge slightly at their ends, said guards 7 have generally parallel projecting portions defining intermediate spacing therein, said intermediate spacing capable of receiving a user's middle finger.

Regarding claim 8, as previously discussed, as the disclosed sheet metal material is bent to form finger guard portions 7, the portions 7 are necessarily adjustable and thus capable of flexing relatively toward one another to sidewardly grip the user's middle finger.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3 and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Goersch (U.S. 1,062,587) in view of Baker (U.S. 1,066,696). Goersch discloses the invention substantially as claimed and as previously discussed including a swimming device comprising plate member 1 and finger guard portions 7 extending therefrom and capable of retaining a user's first and third fingers while the intermediate spacing between portions 7 retains the user's middle finger. Goersch, however, fails to disclose said plate member 1 having a concave side facing toward portions 7. Baker teaches a propelling paddle for swimmers comprising, in part, body portion 1 and finger rings 2 for retaining said paddle on the hand of a user. Specifically, Baker teaches body portion 1 of metal is substantially fan shaped and desirably of concave form, as visible in Figure 3 (page 1, lines 67-75). Thus, it would have been obvious to one having ordinary skill in the art at the time of the invention to construct plate member 1 having a concave side facing toward the finger guards, as taught by Baker, because the concave surface of the body portion maintains contact with the hand and assists the holding of the fingers and thumbs (page 1, lines 96-101).

Claims 6 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Goersch (U.S. 1,062,587) in view of Schlueter et al. (U.S. 4,913,418). Goersch discloses the invention substantially as claimed and as previously discussed including plate member 1 and portions 7 comprising a bendable sheet metal material or similar material (lines 51-54). Goersch fails to disclose said plate member 1 and portions 7 consisting of a molded plastic material instead of a sheet metal material. Applicant's disclosure reveals no criticality in the use of molded plastic, nor does applicant disclose the aforementioned construction to offer any particular purpose or solve any particular problem. Additionally, applicant discloses "The plate and guards may consist of material other than plastic, as for example metal" (page 7, lines 20-21). Schlueter et al. teaches a swim paddle 2 comprising a flat sheet of plastic material that is somewhat flexible, such as a free-foamed rigid PVC foam (column 2, lines 4-14), having an ideal thickness of 2-4 mm (column 2, lines 37-39), thus being sufficiently thin to flex in response to pressure exertion. The plastic material may be molded into paddle 2 (column 2, lines 25-30). Thus, it would have been obvious to construct the paddle or plate member 1 of Goersch, and thus the finger portions formed from said plate, from a rigid yet flexible molded plastic, as taught by Schlueter, because plastic is non-corrosive and inexpensive to work with.

Regarding claim 7, as the finger portions 7 are formed from the material of plate member 1, portions 7 and member 1 are integral.

***Allowable Subject Matter***

Claims 10-12 are allowed.

***Response to Arguments***

Applicant's arguments, filed 11/13/06, with respect to the claims have been considered but are moot in view of the new grounds of rejection.

***Conclusion***

Additional prior art made of record and not relied upon is considered pertinent to applicant's disclosure and is cited on form 892 enclosed herewith. As Examiner has introduced new art in the rejections, this Office Action is non-final.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jena A. Sold whose telephone number is (571) 272-8610. The examiner can normally be reached on Mon. - Fri. 9:00 A.M. to 5:00 P.M..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Welch can be reached on (571) 272-4996. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

JAS



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